

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

XCENTRIC VENTURES, LLC, an)	No. 15-CV-4008-DEO
Arizona Limited Liability Company; and)	
ED MAGEDSON, an Individual,)	
)	
Plaintiffs,)	
)	
vs.)	Defendant's Motion For
)	Partial Judgment on the
)	Pleadings
BEN SMITH, in his Individual Capacity)	
as Sac County Attorney,)	
)	
Defendant.)	

COMES NOW, Defendant, Ben Smith, in accordance with Federal Rule of Civil Procedure 12(c) and Local Rule 7, and moves this Court for Judgment on the Pleadings.

1. The pleadings closed approximately eighteen months ago on August 15, 2015.

2. Accepting, for the sake of argument and solely for purposes of this Motion that the Plaintiffs' factual allegations in the Complaint are true, which is otherwise disputed, reading the Complaint in the light most favorable to Plaintiffs, and drawing all inferences in their favor; there exists no material issues of fact and the Sac County Attorney is entitled to judgment as a matter of law in his favor on the following causes of action:

- Claims for punitive damages under Plaintiffs' common law causes of action – Counts Three, Four and Five;
- All of Plaintiffs' claims that rely on prosecutorial functions closely connected with the judicial system
 - Threatening charges and accusing of criminal conduct;
 - Preparing, signing, filing, responding, presenting, and dismissing an application for civil injunction;

- All activity related to the search warrant (save being the affiant) including preparation and presentation of search warrants, filing, sealing or making public the search warrant;
- Claim for abuse of process under Count Two of Plaintiffs' Complaint;
- Sixth Amendment Claim under Count One of Plaintiffs' Complaint; and,
- Fourth Amendment Claim under Count One of Plaintiffs' Complaint.

WHEREFORE, Defendant, Ben Smith, respectfully requests the Court enter judgment in his favor on above claims asserted against him, and for further relief as the Court deems just and proper.

/S/ Robert Livingston
Kristopher K. Madsen #AT0004969
Robert M. Livingston, #AT0004728
STUART TINLEY LAW FIRM LLP
310 W. Kaneshville Blvd., 2nd Floor
P. O. Box 398
Council Bluffs, Iowa 51502
Telephone: 712.322.4033
Facsimile: 712.322.6243
Email: kmadsen@stuarttinley.com
Email: rlivingston@stuarttinley.com
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th day of January, 2017, the above and foregoing, DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS, was electronically filed with the Clerk of the U.S. District Court using the ECF system, service being made by ECF upon the following:

Peter W. Berger
Berger Law Firm, P.C.
7109 Hickman Road
Urbandale, IA 50322
ATTORNEY FOR XCENTRIC
AND MAGEDSON

Joel B. Robbins
Robbins & Curtin, PLLC
301 E. Bethan Home Rd., Suite B-
100
Phoenix, AZ 85012
ATTORNEY FOR XCENTRIC
AND MAGEDSON

Angela L. Campbell
Dickey & Campbell Law Firm, P.L.C.
301 E. Walnut Street, Suite 1
Des Moines, IA 50309
ATTORNEY FOR XCENTRIC
AND MAGEDSON

Maria Crimi Speth
Jaburg & Wilk, P.C.
3200 North Central Avenue, Suite
2000
Phoenix, AZ 85012
ATTORNEY FOR XCENTRIC
AND MAGEDSON

/S/ Robert Livingston